



CALIFORNIA WATER BOARDS

State Water Resources Control Board Regional Water Quality Control Boards

Water Board Function: Water rights

Water Board Program(s) Relevant to Function:
Water Rights

Problem/Issue Description:

California experiences variable hydrology. As a result, in some years there is inadequate water to meet all needs. The mission of the Division of Water Rights is to establish and maintain a stable system of water rights in California to best develop, conserve, and utilize in the public interest the water resources of the State while protecting vested rights, water quality, and the environment.

Overview of Function:

The State Water Board has sole administrative authority over water rights in California. The federal government does not have authority over water allocation of surface or ground waters. Local agencies have no authority over allocation of surface waters, but do have some authority over allocation of groundwater (except groundwater flowing in a known and definite channel).

The State Water Board issues water right permits, approves proposed changes in water right permit conditions, adjudicates, and enforces those permits. The California courts have concurrent jurisdiction to enforce water right permits, but the State Water Board's permitting process is the sole means by which a water right can be acquired in California. The courts also have authority to determine water rights that predate the administrative water right program, which began in 1914. The State Water Board assists the courts in this regard by initiating and conducting field verification of water right claims in stream system adjudications of water rights (upon request by an affected party) and by making findings of fact, findings of law, or both when requested by the court in other less comprehensive matters.

Role of Water Board Staff:

Under delegation by the State Water Board to the Division Chief and certain redelegations to Division of Water Right staff, staff review, accept, and process water right applications and petitions to amend water right permits and licenses; and confirm and quantify the beneficial use of water diverted pursuant to water right permits and issue a license for that amount. Staff resolves protests filed by those opposed to water right applications and change petitions through settlement agreements negotiated by the parties or through the preparation of staff decision for minor projects. The State Water Board is the lead agency under the California Environmental Quality Act (CEQA) for about 90 percent of water right actions. Staff prepare and oversee the preparation of CEQA documents for most water right projects and represent the State Board as a responsible agency in the CEQA process for the remaining projects.

Staff investigates complaints alleging illegal diversion of water, permit and license conditions violations, impacts to public trust resources, and waste and unreasonable use of water or unreasonable method of diversions. Staff prepares enforcement actions, including Cease and Desist Orders, Administrative Civil Liabilities, permit and license revocations, and referrals to the Attorney General for prosecution. When a hearing is requested by a water diverter on an enforcement action, staff prosecutes the action before the State Water Board on behalf of the Division of Water Rights.

Staff assists the State Board in the conduct of hearings on enforcement actions and on disputed water right applications and change petitions for major projects. Staff assists the court in the determination of water right matters.

Staff records water use reported under permits and licenses and made under claim of right other than permits and licenses, such as a riparian or pre-1914 appropriative, pueblo, and federal reserved rights. Staff also records groundwater use and extractions in certain parts of southern California.

Staff assists the State in the development and implementation of a water quality control plan for the Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan), maintenance of streamflow in Northern California Coastal Counties (AB 2121 Plan) and water rights enforcement. Staff assists the State Board in determining whether water diversion projects, including hydropower projects, will meet water quality standards. Staff reviews proposed changes in point of discharge of wastewater treatments plants operated to treat sanitary sewer wastes to determine whether the change will injure any legal water user or adversely affect the environment.

Staff assists the State Board in other matters as needed, such as the promulgation of annual fee regulations, development and maintenance of water right data management systems, policy development, emergency hearings due to drought conditions, and administration of the water right program budget.

Regional Board staff has no formal role unless the Regional Board decides to participate as a responsible agency in the CEQA process for a water right action. State Board staff administers entire water rights program. Regional Board staff may advise Regional Board or State Board of issues involving water quality.

Role of Regional Board Members:

None.

Role of State Board Members:

Administers entire water rights program.

Primary Issues of Concern:

1. Is there water available for appropriation as requested by new permits, taking into consideration: (a) State policy that domestic use is the highest use of water and

irrigation the next highest use, (b) the State goal of providing a decent home and suitable living environment for every Californian, (c) the public interest (as established in the California Water Plan and county general plans), (d) the effect of the diversion on water quality, (e) the State's responsibility to protect the public trust, and (f) the reuse or reclamation of the water sought to be appropriated?

2. Will a proposed change in the place of use, purpose of use, or point of diversion authorized under an existing water right permit or license or change in point of discharge of treated sanitary sewer wastes injure legal water users or adversely affect fish and wildlife?

3. Do proposed or existing diversions of water adversely affect public trust resources or result in a waste or unreasonable use of water or is the diversion of water an unreasonable method of diversion?

4. What streamflows are necessary to protect vested water right holders, the public trust, and the public interest, recognizing the water right priority system, in the Sacramento-San Joaquin Delta, Northern California coastal streams, and other water courses. What streamflows are necessary to protect water quality?

5. How will hydrodynamic changes resulting from water quality actions such as reclamation of runoff or effluent affect the amount of water available for diversion and use? How will climate change affect the water supply?

Definition of Key Terms:

"Adjudication" -- Determination of an issue. As used in water rights, the quantification of a water right claim and ascertainment of certain information related to the claims, including the place and purpose of use and the point of diversion.

"Appropriation" -- Diversion of water for immediate use on non-riparian property or storing it for later use.

"Direct Diversion" -- The diversion of water for immediate use, measured in gallons per minute or cubic feet per second.

"License" -- A certificate issued to confer a vested water right under certain conditions.

"Major Project" -- An appropriative water right for more than 3 cubic-feet per second by direct diversion or 200 acre-feet per annum by storage.

"Minor Project" -- An appropriation that is not a major project.

"Permit" -- A certificate issued to confer someone who is seeking to develop a water supply permit approval to do so within certain conditions.

"Public Trust" -- The right of the state to protect the public interest in navigation, commerce, and fishing of navigable waters and their tributaries, and, more recently, to a broader range of values.

“Riparian” -- Adjacent to a stream. A riparian right is a water right that allows the use of water from a stream on its riparian land.

“Second-foot” -- A flow rate. The same as 1 cubic-foot per second.

“Usufruct” -- A right to the use of something, but not the ownership of the item.